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Department of Water Resources

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*Attorneys for Idaho Ground Water Appropriators, Inc.*

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION  
OF WATER TO WATER RIGHT NOS.  
36-15501, 36-02551, AND 35-07694.

**IGWA'S RESPONSE TO MOTION FOR  
ORDER AUTHORIZING LIMITED  
DISCOVERY**

Idaho Ground Water Appropriators, Inc. ("IGWA"), through its counsel Givens Pursley LLP and on behalf of its ground water district members, Aberdeen-American Falls Ground Water District, Magic Valley Ground Water District, Bingham Ground Water District, North Snake Ground Water District, Bonneville-Jefferson Ground Water District, Southwest Irrigation District, and Madison Ground Water District (the "Ground Water Districts" or "IGWA"), hereby responds to Rangen, Inc.'s ("Rangen") August 15, 2005 *Motion for Order Authorizing Limited Discovery*.

IGWA has no objection to the parties conducting discovery in this matter. However, IGWA wants to reiterate its concern, stated during the August 16, 2005 status conference, that because its members' continued right to divert ground water under their respective water rights is implicated by the Rangen delivery call, this matter should move forward expeditiously. IGWA does not believe six months of extended discovery as requested by Rangen is necessary.

In late 2003, Rangen filed its delivery call with IDWR requesting administration of all water rights junior to Rangen. At that time, it was common knowledge that the Department, in cooperation with numerous water users and water user groups was developing a computer model to simulate the ESPA and that the model was intended to be used in conjunctive administration of surface, spring and ground water rights. On February 25, 2004, based in part on results of an existing computer model, the Director issued his first Order in this matter, requiring IGWA to provide replacement water to Rangen. The Director issued an Amended Order on March 10, 2004. Throughout that time, work continued on development of the new model and it has been long apparent that the modeling results would be integral to the Department's hydrologic analysis in responding to delivery calls, including Rangen's.

In the first place then, it is unreasonable for Rangen to have waited until now to begin to try to understand the technical analysis underlying the Department's conjunctive management decisions. Further, because of the public participation that has occurred in the development of the new ESPA model, much of the background information is, and has been readily available without the need for discovery. Finally, IGWA submits that complex as these issues are, they are discrete enough to be subject to thorough discovery, review and understanding in time for a spring 2006 hearing date.

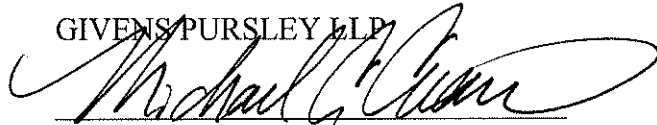
In the meantime, IGWA's members have taken extraordinary measures, including the construction and maintenance of a pipeline to improve water supplies in Billingsley Creek and other springs in response to delivery calls and resulting Department orders. Even though the Director's Second Amended Order on May 19, 2005, found that Rangen's delivery call was futile, IGWA's members continue to operate in the face of significant uncertainty arising from

the pending delivery calls and litigation. They are entitled to some repose and certainty concerning their ultimate obligations, if any, within a reasonable time.

A discovery period of two to three months seems more than adequate to cover discovery of all facts in this case.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of August 2005.

GIVENS PURSLEY LLP

A handwritten signature in black ink, appearing to read "Michael C. Creamer", written over a horizontal line.

Michael C. Creamer

Jeffrey C. Fereday

Brad V. Sneed

*Attorneys for Idaho Ground  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29<sup>th</sup> day of August 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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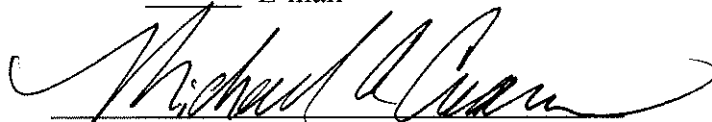
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